Manitoba

ANNUAL REPORT

1983-84

Manitoba
Public Trustee

MANITOBA

ATTORNEY-GENERAL OF MANITOBA
WINNIPEG R3C 0V8

To Her Hon our
Pearl McGonigal
Lieutenant-Governor for the Province of Manitoba

May it please your Honour:

It is my pleasure to present to your Honour the Annual Report of the Public Trustee for the fiscal year ending March 31st, 1984.

Yours sincerely,

Roland Penner

Roland Penner, Q.C.

MANITOBA

PUBLIC TRUSTEE OF MANITOBA

Reply To: _____
File No.: _____
Telephone: _____

7th Floor, Woodsworth Building
405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

The Honourable The Attorney-General
Government of Manitoba
Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Mr. Attorney,

In terms of the provisions of Section 13.2 of The Public Trustee Act, I submit this Second Annual Report for the period ending March 31st, 1984.

The Report of the Provincial Auditor dated August 8th, 1984 is attached hereto as Appendix "A".

Yours truly,

J.D. RAICHURA, Q.C.
Public Trustee

Table of Contents

Introduction 4

Dimensions 5

Revenue Profile 5

Statistical Review 6

Appendix "A" 7

General Observations

As a continuation of the trend covering the past 10 years, the 1983-84 fiscal year experienced increased activity in all areas of the office.

Although there has also been an increase in the revenue, the earnings for the year are shown to be 96.5 per cent of the expenditure. In reality, this is slightly misleading in that there was unforeseen increase in the amount of voted salary expenditure to the tune of $75,000.00. The revenue for the 1984-85 period is estimated at $1,800,000.00. On balance and over a period of time, it is expected that there will be an excess of revenue over expenditure. The compensation charged and collected is at the rates generally allowable in the private sector and is collected only from those who are able to bear these costs without hardship.

The office continues to occupy the 7th floor of the Woodsworth Building but has now reached a point in terms of size and expansion that additional floor space is required. One of the options is a relocation of the office and this is being considered.

The increase in assets under administration over the previous report period is $9,799,828.48 representing an increase of 18 per cent.

The revenue increase of $105,930.47 over the previous fiscal year amounts to a gain of 7.77 per cent.

There was no staff increase during the year. However, Mr. L.H. Murphy, Barrister and Solicitor, has returned to work on a part time basis after a prolonged absence of four years as a result of severe illness.

The two major expenditures facing the operation of the office is the proposed relocation and updating of the present accounting system. At this point in time, the accounts are processed and maintained by two old NCR 399 mini-computers. These machines are unable to properly handle the volume and are so outdated that the company not only does not make them anymore, the parts and hardware are difficult to obtain. Further, these machines are not able to deliver all management information necessary for the nature and size of the operation. A study is presently underway to develop and upgrade the accounting to a fully computerized system.

Guardianship of Person — Abuse of the Elderly

Though not a main and direct mandate, the committeeship of person has resulted in the Public Trustee becoming guardian of ever increasing number of senior citizens becoming wards of the Office. Even with its inherent limitation, this guardianship of person has revealed a number of cases of abuse of the elderly, both physical and financial. It has been found that the number of cases in the period under report is a dramatic increase and is a matter of concern.

In the past year, 28 elderly persons under the jurisdiction and protection of the Public Trustee suffered sufficient financial, emotional or physical abuse to warrant legal interventions on behalf of these persons.

In 7 cases the abuser has been compelled to provide accounting and payment. There are presently 18 cases pending for further legal action. Unfortunately, three claims were abandoned because of lack of credible evidence. In most of these cases, the victim is the only witness but is without the necessary mental capacity to testify in a Court of Law.

The 3 cases of physical abuse involved the victim's close relatives. Action was taken to provide shelter and residence in safe environments.

These cases clearly demonstrate the need for an independent public entity of a guardian to provide help and assistance to these unfortunate individuals. The Public Trustee is the appointment of last resort and in most cases he is the only resort. The following cases will illustrate the point.

(i) A so-called friend obtained a bank draft of over $30,000.00 from the victim. This was discovered upon assumption of the estate administration and money was recovered by the office.

(ii) The victim's cousin took physical control of the entire saving amounting to $35,000.00. Legal action by the Public Trustee resulted in the recovery of the amount plus a large sum by way of costs and interest.

(iii) The daughter who used her mother's funds and failed to make monthly payments to the nursing home was replaced by the Public Trustee as committee.

(iv) The victim was removed from her daughter's home after several complaints with respect to emotional, physical and possible sexual abuse. The intervention by the office over the objection of the daughter and of the family's physician resulted in a nursing home placement.

This is only the tip of the iceberg. It would appear that there are very many such cases in which the victim suffers in silence. The ones that result in the Public Trustee's intervention are the extreme cases of abuse which cannot be suppressed anymore. Further, the Public Trustee's intervention comes into play only in cases in which the victim is mentally disordered.

In view of the changing social values, the ongoing increase in the population of the elderly and having regard to their rights, it is now time to consider and develop a system to effectively deal with this grave matter of the abuse of the elderly.

Guardianship of Person — Medical Consent

The committeeship of person provides for giving of substituted consent by the Public Trustee on behalf of his wards who lack the capacity to understand and who require medical intervention. The system seems to work fairly well and after the initial period of difficulty, the medical profession, with few exceptions, has now an understanding of the guardianship of person. Difficulties are still being experienced with some of the hospitals. There is apparently a lack of understanding on part of the administrators of the hospitals with respect to the correct state of law. Basically, "informed consent" is for the protection of the physician in question and the obligation to obtain such consent quickly rests with the doctor. The insistence of some of the hospitals on technical and formal compliance of some of their rules delays treatment and is irritating. There is every hope that the ongoing process of informing persons involved with giving of health care regarding proper procedure will eventually resolve some of the misunderstandings.

Elective Procedures

The law with respect to the important and controversial issue of sterilization of mentally incompetent persons is awaiting clarification in the case of In re Eve pending before the Supreme Court of Canada. The Public Trustee's intervention in this important case will provide active participation in the appeal itself. A definitive judgment by the Court establishing and providing criteria for elective sterilization and other similar procedures in cases involving both therapeutic and non-therapeutic situations will be of immense benefit to the medical as well as the legal profession.

In the meantime, the giving of substituted consent by the Public Trustee in these matters is strictly upon approval by the Court of Queen's Bench of our province. Therefore, regardless of the nature of the problem, whether therapeutic or not, the practice is to refer such cases to a Judge of the Court of Queen's Bench for approval on the basis of available medical and other evidence.

There has been no case of application to the Court or request for elective procedure during the year.

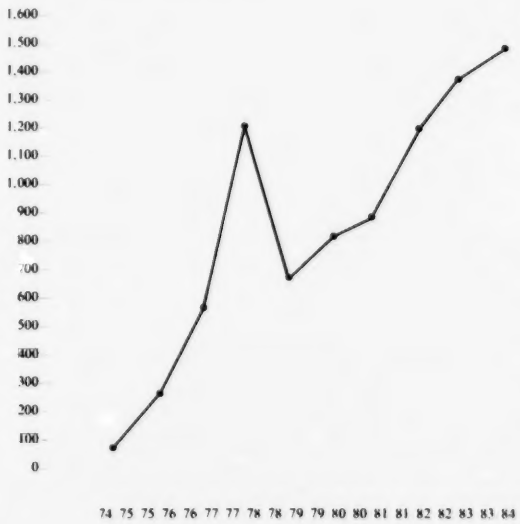
Committees appointed by the Court

Because of the lack of effective statutory and regulatory provisions concerning Court appointed committees, instances of wrongful and improper handling of the estates by such committees have been reported. Although there are requirements in The Mental Health Act with respect to inventories and accounting by Court appointed committees, some of these individuals simply ignore the legal provisions. This is because there is a lack of procedure to police a proper and honest accounting and administration by committees. This could be one instance of the weakness in the system resulting in financial abuse of the elderly.

The Public Trustee of Manitoba
Dimensions
1983 - 1984

Number of Subordinate Staff:	53
Annual Operating Budget:	$ 1,552,661.00
Annual Revenue:	1,470,100.00
Assets under Administration: ...	62,000,000.00
Number of Estate, Trust and Legal Files:	6826

The Public Trustee of Manitoba
Revenue Profile



Year	($000) Revenue	Revenue as % of Expenditure
1974/75	$ 93.4	26.9%
1975/76	258.2	53.7%
1976/77	549.3	99.2%
1977/78	1,191.5*	186.5%
1978/79	653.7	92.1%
1979/80	819.7	100.6%
1980/81	885.8	90.8%
1981/82	1,170.5	102.5%
1982/83	1,364.2	102.1%
1983/84	1,470.1	99.55%

** Includes non-recurring collection of Prior Years Fees totalling $586.2.*

The Public Trustee of Manitoba
Comparison of Trust Division Activity
as at March 31

	1981	1982	1983	1984
Dollars under Administration:	$10,405.6	$13,297.1	$16,165.2	$19,709.7
Number of Accounts				
Deceased Estates:	723	730	752	759
Infant Trusts:	615	737	805	887
	1,338	1,467	1,557	1,646

The Public Trustee of Manitoba
Comparison of Mental Health Division Activity
as at March 31

	1981	1982	1983	1984
Dollars under Administration:	$24,182.5	$30,253.4	$32,263.4	$42,288.8
Number of Accounts with Assets:	2,923	3,028	3,065	3,083
Total number of Accounts:	4,786	4,661	4,916	4,816

The Public Trustee of Manitoba
Comparison of Legal Department Activity
as at March 31

	1981	1982	1983	1984
Number of files at beginning of year:	203	253	254	326
Number of files opened:	234	250	348	344
Subtotal:	437	503	602	670
Number of files closed:	184	249	276	306
Number of files at year end:	253	254	326	364

Government of the Province of Manitoba

The Public Trustee of Manitoba

Auditor's Report and Financial Statements
for the year ended March 31, 1984

PROVINCE OF MANITOBA
PROVINCIAL AUDITOR

MANITOBA

PROVINCE OF MANITOBA
PROVINCIAL AUDITOR

The Public Trustee of Manitoba

Report of the Provincial Auditor's Office

We have examined the financial statements, being Exhibits A and B, of The Public Trustee of Manitoba for the fiscal year ended March 31, 1984. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion, these financial statements present fairly the financial position of affairs of the estates and trusts under jurisdiction of the Public Trustee as at March 31, 1984 and the cash receipts and disbursements for the year then ended in accordance with the accounting policies stated in note 1 to the financial statements applied on a basis consistent with that of the preceding year.

W.K. Ziprick, C.A.
Provincial Auditor.

August 8, 1984
Winnipeg, Manitoba.

Government of the Province of Manitoba

Exhibit A

The Public Trustee of Manitoba

Balance Sheet of estates and trusts under administration as at March 31, 1984 (with 1983 figures for comparison)

Assets

	1984	1983
Cash on hand and in bank:		
General	$,798,961	$,216,651
Provincial funds	4,718	4,395
	803,679	221,046
Expenditures recoverable from estates and trusts (Note 1)	2,782	3,104
Common fund investments (Notes 1 and 6)	41,761,100	34,649,886
Term deposits and investment certificates, at par value	2,529,076	3,659,563
Government of Canada and other bonds, at par value	12,468,316	9,950,918
Shares of capital stock and mutual funds (Note 1)	946,067	463,125
Annuity contracts (Note 1)	100,023	133,150
Accounts receivable (Note 1)	85,003	94,948
Rentals receivable (Note 1)	2,524	2,889
Notes receivable, principal (Note 1)	105,468	58,560
Mortgages and agreements receivable (Note 1)	100,165	158,698
Interests in other estates (Note 1)	4,118	3,562
Real estate (Note 1)	3,110,780	3,045,713
	$62,019,101	$52,445,162

Liabilities

	1984	1983
Liabilities of estates:		
Mortgages, notes and agreements payable (Note 1)	$ 1	$ 1,145
Public Trustee, fees payable (Note 2)	13,070	7,843
	13,071	8,988
The Province of Manitoba:		
The Public Trustee accountable advance	7,500	7,500
Estates and trusts under administration: (Note 1)		
Excess of recorded value of assets over liabilities:		
The Mental Health Act	42,288,782	36,263,448
The Public Trustee Act	19,709,748	16,165,226
	$62,019,101	$52,445,162

The Public Trustee of Manitoba

Statement of Receipts and Disbursements
for the year ended March 31, 1984
(with 1983 figures for comparison)

Receipts

	1984	1983
Funds held by estates and trusts brought under administration	$ 4,450,756	$ 4,521,321
Realization of equities in other estates	579,015	508,130
Pensions, compensation and assistance	7,351,622	7,076,205
Sickness, disability and other insurance benefits	1,931,674	1,341,698
Collections on account of:		
Accounts receivable	90,091	52,043
Rentals and leases receivable	230,227	173,237
Mortgages and agreements receivable	22,311	14,444
	342,629	239,724
Sale of chattels	143,312	130,346
Sale of real estate	1,069,406	955,695
Interest — bonds and investment certificates	6,068,906	6,032,848
Dividends	37,238	31,549
Bank interest	6,877	4,750
Statutory fees collected (Note 3)	20,446	8,502
Total receipts	22,001,881	20,850,768
Cash on hand and in bank at beginning of year	216,651	312,195
	$22,218,532	$21,162,963

Disbursements

	1984	1983
Payments on account of:		
Accounts payable discharged	$ 110,075	$, 66,296
Mortgages and agreements payable	37,147	55,125
Real estate purchases	16,045	1,240
	163,267	122,661
Maintenance:		
Maintenance incurred in hospitals prior to June 30, 1958	510,509	405,215
Board, room and other expenses (Note 4)	5,312,465	4,715,220
	5,822,974	5,120,435
Preservation of estates:		
Realty and income taxes	616,841	618,047
Insurance	24,954	23,146
Repairs	54,244	27,607
Sundry	386,229	361,012
	1,082,268	1,029,812
Support of dependents	96,988	65,333
Administration and passing of accounts (Note 2)	1,449,571	1,356,097
Burial expenses	404,590	383,540
Estates and trusts released from administration	4,759,105	4,282,384
Statutory fees remitted (Note 3)	20,446	8,502
Total disbursements, before purchase of securities	13,799,209	12,368,764
Purchase of securities, less sale or redemption of securities (1984 - $28,793,603; 1983 - $38,823,492)	7,620,362	8,577,548
Cash on hand and in bank at end of year	798,961	216,651
	$22,218,532	$21,162,963

Government of the Province of Manitoba

The Public Trustee of Manitoba

Notes to Financial Statements
March 31, 1984

1. Significant Accounting Policies

The Statement of Receipts and Disbursements reflects cash transactions which have occurred during the year for estates and trusts under administration.

The Balance Sheet reflects a position on a modified accrual basis including all known assets and liabilities of the estates and trusts, except for chattels which are accounted for by unit records and accrued investment earnings and current liabilities which are accounted for on a cash basis.

The net recorded value of the estates and trusts under administration is governed by the valuation criteria described on the Balance Sheet as well as the following evaluation and accounting policies:

a) Expenditures Recoverable from Estates and Trusts

Expenditures recoverable from estates and trusts represent disbursements made on behalf of estates or trusts for which funds were not immediately available; these expenditures will be charged to the estates or trusts concerned in due course, when funds become available.

b) Common Fund Investments

Investments of the common fund, established pursuant to Section 7.1(1) of the Public Trustee Act, are restricted to securities and loans authorized under the Trustee Act. Common fund investments are recorded at cost, adjusted for the amortization of premiums or discounts on purchase on a straight line basis over the remaining term to maturity of the security. Earnings are distributed semi-annually to the individual estates and trusts on a pro rata basis.

c) Shares of Capital Stock and Mutual Funds

(i) Mental Health and Infant Trusts

The basis of valuation of shares assumed under administration prior to December 22, 1971 is at Valuation Day prices (market value as at December 22, 1971), except shares for which no Valuation Day price exists. Shares are then recorded at cost, if available, or at a nominal value of $1.00.

Shares assumed under administration since December 22, 1971 have been recorded at the market value as at the date of assumption or at a nominal value of $1.00 where market value is not readily available.

All shares purchased by the trustee are recorded at cost.

(ii) Estates of Deceased Persons

Shares forming part of estates of deceased persons assumed under administration have been recorded at the market value as at the date of death. Shares purchased by the Public Trustee are recorded at cost. Where no market value exists, nominal values of $1.00 are used.

d) Annuity Contracts

Annuity contracts include several accounts recorded at a nominal value of $1.00 each.

e) Accounts Receivable and Rentals Receivable

Accounts receivable and rentals receivable include several accounts recorded at a nominal value of $1.00 each.

f) Notes, Mortgages and Agreements Receivable

Notes receivable and mortgages and agreements receivable reflect the amount of principal and interest due and unpaid at the time each estate was brought under administration, less any payments subsequently received. Interest due and accrued during administration is not recorded by the Public Trustee until such time as it is received.

g) Interest in Other Estates

Interest in other estates include several accounts recorded at a nominal value of $1.00 each.

h) Real Estate

Real estate is valued at a multiple of five times the assesed value on the property tax notice; burial plots, mines and mineral rights, and mobile homes have been recorded at a nominal value of $1.00 each.

i) Mortgages, Notes and Agreements Payable

Mortgages, notes and agreements payable have been recorded in instances where the possibility exists that payments may be made on account of these liabilities. There is one exception which has been recorded at a nominal value of $1.00 because required payments are being made by a third party. Interest due and accrued during administration is not recorded until it is paid.

2. Administration Fees

Under Section 10 of the Public Trustee Act, the Public Trustee may determine reasonable charges based on the services provided to the estates and trusts under his administration. Charges are made annually on the aforementioned basis to each estate and trust on its anniversary date of enrollment with the Trustee, except those estates and trusts which do not have sufficient funds, where the charges are either reduced or not made. These fees are remitted to the Province of Manitoba.

3. Statutory Fees

Under Section 84(3) of the Queen's Bench Act and Section 82 of The Surrogate Courts Act, the Public Trustee of Manitoba provides legal services for estates and trusts not under his administration. Fees for these services are recorded as receipts and remitted to the Province of Manitoba.

4. Board, Room and Other Expenses

Board, room and other expenses reflect payments made for current general living expenses, including clothing, comforts, medical, nursing home costs, etc., during periods of supervision, probation and hospitalization

5. Administration Costs

Administration costs of the Public Trustee of Manitoba are paid out of appropriations of the Department of Attorney-General and are not reflected in these financial statements. Where appropriate these costs are recovered from estates and trusts in a manner as explained in Note 2.

Government of the Province of Manitoba

The Public Trustee of Manitoba

Notes to Financial Statements
March 31, 1984

6. Common Fund — Summary of Investments

The investments of the Common Fund consist of the following:

	1984	1984	1983
	Par Value	Book Value	
Term deposits, investment certificates and treasury bills	$ 4,900,000	$ 4,900,000	$ 8,796,395
Government of Canada bonds	26,615,000	26,849,743	21,721,094
Province of Manitoba bonds	4,150,000	4,137,590	2,135,376
Province of Ontario bonds	1,900,000	1,892,232	—
Canadian Imperial Bank of Commerce Bonds	2,000,000	2,008,284	—
Ontario Hydro-Electric bonds	1,250,000	1,273,251	1,297,021
B.C. Housing and Employment Development Financing Authority bonds	700,000	700,000	700,000
	$41,515,000	$41,761,100	$34,649,886